

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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ADRIAN SWANSON, JR.,

Plaintiff,

v.

N.D.O.C., *et al.*,

Defendant.

Case No. 2:20-cv-01799-GMN-EJY

ORDER

On October 7, 2020, this Court issued an order directing Plaintiff to file a fully complete application to proceed *in forma pauperis* or pay the full filing fee of \$400 on or before December 7, 2020. (ECF No. 3 at 2). The December 7, 2020 deadline has now expired and Plaintiff has not filed an application to proceed *in forma pauperis*, paid the full \$400 filing fee, or otherwise responded to the Court's order.

District courts have the inherent power to control their dockets and “[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal” of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action, with prejudice, based on a party’s failure to prosecute an action, failure to obey a court order, or failure to comply with local rules. See *Ghazali v. Moran*, 46 F.3d 52, 53-54 (9th Cir. 1995) (affirming dismissal for noncompliance with local rule); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (affirming dismissal for failure to comply with an order requiring amendment of complaint); *Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (affirming dismissal for failure to comply with local rule requiring *pro se* plaintiffs to keep court apprised of address); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987) (affirming dismissal for failure to comply with court order); *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986) (affirming dismissal for lack of prosecution and failure to comply with

1 local rules).

2 In determining whether to dismiss an action for lack of prosecution, failure to obey
3 a court order, or failure to comply with local rules, the court must consider several factors:
4 (1) the public's interest in expeditious resolution of litigation; (2) the court's need to
5 manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring
6 disposition of cases on their merits; and (5) the availability of less drastic alternatives.
7 See *Thompson*, 782 F.2d at 831; *Henderson*, 779 F.2d at 1423-24; *Malone*, 833 F.2d at
8 130; *Ferdik*, 963 F.2d at 1260-61; *Ghazali*, 46 F.3d at 53.

9 Here, the Court finds that the first two factors, the public's interest in expeditiously
10 resolving this litigation and the Court's interest in managing the docket, weigh in favor of
11 dismissal. The third factor, risk of prejudice to Defendants, also weighs in favor of
12 dismissal, since a presumption of injury arises from the occurrence of unreasonable delay
13 in filing a pleading ordered by the court or prosecuting an action. See *Anderson v. Air*
14 *West*, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor—public policy favoring
15 disposition of cases on their merits—is greatly outweighed by the factors in favor of
16 dismissal discussed herein. Finally, a court's warning to a party that his failure to obey
17 the court's order will result in dismissal satisfies the “consideration of alternatives”
18 requirement. *Ferdik*, 963 F.2d at 1262; *Malone*, 833 F.2d at 132-33; *Henderson*, 779
19 F.2d at 1424.

20 The Court's order requiring Plaintiff to file an application to proceed *in forma*
21 *pauperis* or pay the full filing fee on or before December 7, 2020 expressly stated: “IT IS
22 FURTHER ORDERED that, if Plaintiff does not file a fully complete application to proceed
23 *in forma pauperis* with all three documents or pay the full \$400 filing fee for a civil action
24 on or before **December 7, 2020**, the Court will dismiss this action without prejudice for
25 Plaintiff to refile the case with the Court, under a new case number, when Plaintiff has all
26 three documents needed to file a complete application to proceed *in forma pauperis* or
27 pays the full \$400 filing fee.” (ECF No. 3 at 2-3). Thus, Plaintiff had adequate warning
28 that dismissal would result from noncompliance with the Court's order to file an application

1 to proceed *in forma pauperis* or pay the full filing fee on or before December 7, 2020.

2 IT IS THEREFORE ORDERED that this action is dismissed without prejudice
3 based on Plaintiff's failure to file an application to proceed *in forma pauperis* or pay the
4 full filing fee in compliance with this Court's order dated October 7, 2020.

5 IT IS FURTHER ORDERED that the Clerk of Court shall enter judgment
6 accordingly and close this case. No additional documents will be filed in this closed case.

7 DATED: December 15, 2020

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10 GEORGIA M. NAVARRO
11 UNITED STATES DISTRICT JUDGE
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